IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

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:: **JUDGMENT** ::

Tarachand Vs. Chhagan Lal & Ors.

S.B.CIVIL MISC. APPEAL NO.94/1995.
Against the award dated 20.10.1994 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No. 91/1992.

Date of Judgment ::: 14th May 2007.

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Roshan Lal for
Mr. L.R. Poonia, for the appellant.

Mr. V.R. Mehta]
Mr. Rajesh Choudhary for
Mr. L.R. Choudhary], for the respondents.

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BY THE COURT:

The claimants have preferred this appeal being aggrieved of the award dated 20.10.1994 made by the Motor Accidents Claims Tribunal, Barmer in their Claim Case No.91/1992 whereby the Tribunal has awarded compensation in the sum of Rs.40,800/- together with interest at the rate of 12% per annum only in favour of the claimant-appellant No.4

on account of accidental death of their father Sawaji, about 53 years of age.

The claimant-appellants sought compensation in the sum of Rs.4,85,500/- against the driver, owners and insurer of a bus bearing registration No.RJ29 P 465 with the averments that on 31.03.1992 at about 12:30 – 1:00 p.m. the claimant No.2 Amra Ram and his father Sawaji were standing at Sindhari bus stand when the non-applicant No.1 brought driving the aforesaid bus and hit and crushed the victim Sawaji beneath its wheels; an FIR was lodged at Police Station, Sindhari whereupon case No.23/1992 was registered; the injured Sawaji was taken for first aid to Sindhari Hospital and then was removed to the Government Hospital at Barmer where he succumbed to the injuries. The claimants, sons of the deceased Sawaji, stating their age at 28, 25, 15 and 10 years respectively, submitted for quantification of compensation that the deceased was earning about Rs.3,000/- per month from his tailor's shop and claimed pecuniary loss of his likely earnings for next 12 years at Rs.4,32,000/-. The claimants also alleged having spent Rs.2,000/- on treatment of the victim and Rs.1,500/- on transportation and sought further an amount of Rs.50,000/- towards non-pecuniary loss. The insurer non-applicant No.4 put the claim for compensation to contest with the submissions, inter alia, that the vehicle in

question was not even insured with it at the time of accident and that the driver was not holding valid driving licence.

After framing necessary issues on the pleadings of the parties and taking evidence, the Tribunal proceeded to decide in issue No.1 that the accident occurred for rash and negligent driving of the said vehicle that caused fatal injuries to the victim Sawaji. In issues Nos.3 to 5, the Tribunal found that the insurance cover issued on 31.03.1992 commenced from '00' hours and, hence, rejected the contention of the insurer that vehicle was insured after the accident; and, with the finding that the driver was holding a valid driving licence, held the insurer liable for compensation.

Taking up quantification of compensation in issue No.2, with reference to the facts that the claimants Nos.1 & 2 were 28 and 25 years of age; and that the claimant No.3 was 15 years of age at the time of filing of claim application and he too had attained majority, the Tribunal formed an opinion that only the claimant No.4, 10 years of age at the time of filing of claim application, was dependent on the deceased. The Tribunal further observed that the claimant No.4 would also attain majority after 6 years and would be capable of earning his livelihood. With these observations, the Tribunal abruptly picked up the figure of Rs.40,000/- to be awarded as compensation to the claimant No.4. The Tribunal then allowed

Rs.300/- towards transportation and Rs.500/- towards treatment expenditure and in this manner made the award of compensation in the sum of Rs.40,800/-, only in favour of the claimant No.4; and allowed interest at the rate of 12% per annum from the date of filing of claim application.

Assailing the award aforesaid, learned counsel for the claimants submitted that the Tribunal has seriously erred in awarding compensation only in the sum of Rs.40,800/- and that too only in relation to claimant No.4 and in failing to consider that in the given set up where the family comprised of the father and his four sons, two of them minors, a substantial contribution by the father towards upkeep, maintenance and development of family cannot be ignored. Learned counsel further submitted that the claimants having categorically established that their deceased father was earning Rs.3,000/- per month in a tailor's job, reasonable compensation towards pecuniary loss ought to have been allowed; and the claimants having been deprived of love, affection and guidance of their father, ought to have been allowed reasonable amount towards non-pecuniary loss also.

Learned counsel for the vehicle owner without joining issue on the quantum of compensation, submitted that the Insurance Company was liable for payment of the amount of compensation. Learned counsel for the respondent No.4

Insurance Company submitted that the Tribunal has examined the entire evidence on record and has arrived at the figure of just compensation that cannot be said to be low or inadequate in the fact situation of the present case. Learned counsel referred to the statement of the claimant No.1 Tarachand who admitted earning about Rs.100-125/- per day and his brother Amra Ram (claimant No. 2) earning about Rs.50-55/- per day. Learned counsel submitted that in view of economic dependency on the deceased only of the claimant No.4, the award of compensation could not be said to be insufficient or inadequate.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the entire record, this Court is clearly of opinion that the impugned award on its quantification of compensation remains grossly inadequate and deserves modification by upward revision.

It may be pointed out that so far the liability of the respondent Insurance Company is concerned, the findings in that regard as recorded by the Tribunal rejecting its objections seem to have become final inasmuch as it appears from the certified copy of order dated 18.01.1995 passed by this Court in S.B.Civil Misc. Appeal No.9/1995 (as available on record of the Tribunal) that the appeal submitted by the Insurance

Company against the award in question has already been dismissed summarily by this Court.

So far as quantification of compensation is concerned, it is difficult to appreciate the approach of the Tribunal in making an award only in the sum of Rs.40,800/- and in assuming that only claimant No.4 would be entitled for compensation towards pecuniary loss. The Tribunal has omitted to consider the effect of the fact that on the date of accident, i.e. 31.03.1992, the claimant No.3 was 15 years of age and the claimant No.4 was 10 years of age. Moreover, even if claimants Nos.1 and 2 were the grown up sons of deceased and were earning separately, that by itself cannot result in denying the claimants just compensation on account of accidental death of their father who was earning substantially as a tailor-master and was 53 years of age. It is difficult to comprehend as to how and on what basis, the Tribunal has abruptly chosen a figure of Rs.40,000/- to be awarded as compensation in this case? The award of compensation in a vehicular accident case deserves to be made on certain principles and rationale; and the proposition of picking up a figure to be awarded as lump sum compensation cannot be adopted in every case.

In the present case, the claimants have clearly established that the deceased was 53 years of age and was

earning about Rs.100-125/- per day in his tailor's job and had in the family, amongst others, two minor sons. The Tribunal has brushed substantial loss of dependency of the claimants aside on the strange considerations that the claimant No.3 has attained majority during pendency of claim application and that the claimant No.4 would also become major after 6 years. It cannot be adopted as an abstract principle in the ordinary family set ups of our society that as soon as a person attains majority, he looses all his dependency on the parents. Further, while considering a claim for compensation in a vehicular accident case, it is not a rule of universal application that whenever a claimant is shown earning something independently, he is not entitled for any compensation towards loss of contribution from his father. The propositions as adopted by the Tribunal could only be rejected as baseless, incorrect, and detached from ground realities. Yet further, there does not appear any reason for which the Tribunal has chosen not to allow any amount to the claimants towards loss of love, affection, and guidance of their father. The impugned award having been made contrary to the legal principles and in ignorance of relevant considerations; and being shockingly low and inadequate, deserves modification.

Having regard to the facts and circumstances of the case, this Court is of opinion that for the purpose of awarding

just compensation in this case, though the income of the deceased in his tailor's job could be taken at Rs.3,000/- per month as established by the claimants; but in view of his two major sons earning separately and in the overall family set up, deceased's contribution to the family might be taken at about 60% of his earnings, i.e., a bit less than two-third. Even on this basis, the loss of contribution in the sum of Rs.1,800/- per month cannot be denied to the claimants that leads to a multiplicand of Rs.21,600/- per annum; and even when capitalised with a lower side multiplier of 11, pecuniary loss comes to Rs.2,37,600/-. Four sons of the deceased deserve to be allowed Rs.5,000/- each towards loss of love and guidance of their father. While retaining Rs.300/- towards transportation and Rs.500/- towards treatment expenditure (the deceased remained hospitalised for a day) as allowed by the Tribunal, the claimants deserve to be allowed further Rs.1,600/- for funeral expenses. Therefore, the claimants are entitled for compensation in the sum of Rs.2,60,000/- (2,37,600/- + 20,000/- + 300 + 500 + 1,600) in place of the amount of Rs.40,800/- as allowed by the Tribunal. The claimants are, therefore, entitled for a further amount of Rs.2,19,200/- over and above the amount awarded by the Tribunal.

The Tribunal has allowed interest at the rate of 12% per annum on the awarded amount. However, having regard to the circumstances of the case, the period of litigation, and substantial enhancement being allowed herein, it appears appropriate to allow interest to the claimants on the enhanced amount of compensation at 6% per annum from the date of filing of claim application.

In the result, this appeal succeeds and is partly allowed; the award of compensation made by the Tribunal is modified and the claimants are awarded compensation in the sum of Rs.2,60,000/- in place of Rs.40,800/- allowed by the Tribunal. The claimants shall be entitled for an amount of Rs.2,19,200/- over and above the amount awarded by the Tribunal with interest at the rate of 6% per annum from the date of filing of claim application, i.e., 03.10.1992. It shall be required of the insurer-respondent No.4 to deposit the amount now payable under the modified award within 30 days from today with the Tribunal that shall carry out appropriate apportionment amongst the claimants and shall issue necessary orders for disbursement. However, in the circumstances of the case, parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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